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SERVICE DATE - NOVEMBER 27, 1996

SURFACE TRANSPORTATION BOARD¹

DECISION

STB Finance Docket No. 33116

WISCONSIN CENTRAL LTD.--ACQUISITION EXEMPTION--LINES OF UNION
PACIFIC RAILROAD COMPANY

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of a petition for exemption and a request for public comments, including comments on labor protective arrangements to be provided by a Class II railroad under 49 U.S.C. 10902.

SUMMARY: Wisconsin Central Ltd. (WCL), a Class II rail carrier, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 for its acquisition of two lines of railroad from Union Pacific Railroad Company (UP) in central Wisconsin. Section 10902 is a new provision added by the ICCTA governing purchases of active rail lines by Class II (medium sized) and Class III (small) carriers. Under subsection 10902(d), a Class II railroad that acquires a rail line subject to the Board's jurisdiction must provide a fair and equitable arrangement for the protection of employees who may be affected by the transaction. The arrangement shall consist exclusively of 1 year of severance pay equal to the employee's earnings during the 12 months preceding the application filing date.

WCL has proposed an employee protective arrangement to comply with subsection 10902(d). The labor protective arrangement that results from this proceeding may be used as a model for conditions we impose governing the minimum labor protective arrangements we require with respect to acquisitions by Class II railroads. Such arrangements have in the past consisted of two elements: (1) procedural (i.e., when must employees be notified of their options and by whom); and (2) substantive (i.e., how many years of protection should be provided and what should that level of protection be). Plainly the new provision explicitly limits substantive aspects of any arrangement we may require. We seek comments on whether WCL's proposed arrangement meets the statutory requirements, and on whether and to what extent we should establish and/or oversee the procedural aspects of labor protective arrangements under this statute.

DATES: Comments are due on December 27, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Finance Docket No. 33116 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, send one copy of comments to petitioner's representative: Janet

¹ The ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104-88, 109 Stat. 803, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board) effective January 1, 1996. This notice relates to a transaction that is subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

H. Gilbert, General Counsel, Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017-5062.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: WCL, a wholly owned subsidiary of Wisconsin Central Transportation Corporation, proposes to acquire from UP two rail lines, the "Hayward Line" between Hayward and Hayward Junction, WI, and the "Wausau Pocket" between Kelly and Wausau-Schofield, WI, totaling 17.8 miles in central Wisconsin. There are two shippers on the Hayward Line and eight shippers on the Wausau Pocket that jointly generate approximately 12,300 carloads a year. WCL submitted supporting statements from each shipper on the two lines. The Board seeks comments on the proposed transaction.

As noted, the ICCTA included a new statutory provision--49 U.S.C. 10902--that applies to the acquisition or operation of additional rail lines by Class II and Class III railroads. As enacted, subsection 10902(c) requires the Board, after application by a Class II or III rail carrier, to issue a certificate authorizing the transaction "unless the Board finds that such activities are inconsistent with the public convenience and necessity." Under subsection 10902(d), a Class II railroad receiving such a certificate must provide a fair and equitable arrangement for the protection of employees who may be adversely affected by the transaction. The arrangement shall consist exclusively of 1 year of severance pay equal to the employee's earnings during the 12 months preceding the application filing date. The parties may agree to terms other than as provided. The Board may approve the requested certificate as filed or may include conditions (other than labor protection conditions) the Board finds necessary in the public interest. 49 U.S.C. 10902(c). While petitioner seeks an exemption from subsection 10902, the Board's exemption authority may not be used to relieve a rail carrier of its obligation to protect the interests of employees. 49 U.S.C. 10502(g).

Petitioner expects that the transaction, while eliminating nine UP positions, will create eight new positions on WCL. WCL indicates that it will offer these new positions to displaced UP employees on a priority basis, subject to application and employee qualification. WCL will provide affected UP employees with written notice of the positions, including wage and benefit levels, job responsibilities, and other relevant data, at least 1 month before consummation of the transaction. WCL proposes to inform displaced UP employees of any option they may have to decline a WCL job and elect a severance payment.

Under petitioner's protective arrangement, for any severed UP employee not hired by WCL, WCL will provide a single payment equal to the employee's railroad earnings for the 12-month period ending October 18, 1996. For severed UP employees hired by WCL, severance payments will be paid for 1 year on a prorated, monthly basis, reduced each month by the employee's WCL earnings for the corresponding month. WCL estimates that its pay scales are 90% of those of Class I carriers.

In view of the requirement of subsection 10902(d) that a Class II railroad provide a fair and equitable arrangement for the protection of employees adversely affected by the carrier's acquisition, the Board invites comments on whether WCL's proposed employee protective arrangement meets the requirements of 49 U.S.C. 10902. As noted, such arrangements have in the past consisted of two elements: (1) procedural (i.e., when must employees be notified of their options and by whom); and (2) substantive (i.e., how many years of protection should be provided and what should that level of protection be). Plainly the new provision explicitly limits substantive aspects of any arrangement we may require. Thus, specifically we seek comments on whether and to what extent we should establish and/or oversee the procedural aspects of labor protective arrangements under this statute.

Comments may address such issues as the minimum standards or conditions for the arrangement, the carrier's responsibility to negotiate an arrangement or, failing agreement, to disclose those standards or conditions prior to consummation, and criteria for determining whether the arrangement is fair and equitable. The resulting labor protective arrangement imposed in this proceeding may be used as precedent for the labor protection we impose on future acquisitions by Class II railroads.

Comments (an original and 10 copies) must be in writing, and are due on December 27, 1996. Additional information may be obtained from petitioner's representative. We encourage any commenter to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any diskette submission (one diskette will be sufficient) should be in addition to the written submission.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

Decided: November 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams
Secretary